

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff.

V.

RANDALL GONZALEZ,

Defendant.

NO. 2:18-CR-0051-TOR-1

FOURTH ORDER DENYING
DEFENDANT'S MOTION TO
REDUCE SENTENCE

BEFORE THE COURT is Defendant's fourth Motion for Reduction in

Sentence Pursuant to 18 U.S.C. § 3582(c)(1)(A)(i). ECF No. 100. This matter was submitted for consideration without oral argument. The Court has reviewed the record and files herein and is fully informed. For the reasons discussed below, Defendant's fourth request for release is denied.

BACKGROUND

On May 8, 2018, Randall Gonzalez appeared before the Court and entered a plea of guilty to the Indictment filed on March 20, 2018, charging him with one count of Possession With the Intent to Distribute Methamphetamine, in violation of

1 21 U.S.C. § 841; and one count of Felon and Domestic Violence Misdemeanant in
2 Possession of a Firearm, in violation of 18 U.S.C. § 922(g)(9). ECF Nos. 23, 24.
3 On January 16, 2019, this Court sentenced Defendant to concurrent 87-month
4 terms of imprisonment, followed by a 3-year term of supervised release. ECF No.
5 66. Defendant's projected good time credit release date is April 15, 2025.

6 On June 4, 2020, Defendant requested a sentence reduction from the Warden
7 of the Sheridan FCI. ECF Nos. 92 at Ex. C. On July 22, 2020, Defendant filed his
8 first motion seeking his early release. ECF No. 85. The Court denied the motion
9 on August 17, 2020. ECF No. 88.

10 On January 11, 2021, Defendant filed his Second Motion for Reduction in
11 Sentence. ECF No. 92. Defendant represented that he was 49 years old and
12 suffers from diabetes, C.O.P.D., asthma, high blood pressure, sleep apnea, and
13 suffers from gastroesophageal reflux disease (GERD), as well as nerve damage to
14 his legs from a car accident in 2010. ECF No. 92 at 3. He claimed that the
15 diabetes, C.O.P.D., asthma, and high blood pressure place him in a high-risk
16 category of death in the event he was to contract coronavirus, according to the
17 CDC guidelines. *Id.* Defendant contended the Court should consider his
18 rehabilitation, his enrollment in the GED program, his excellent work history, and
19 that there is no concern that he would be a danger to the public if released. *Id.* at 4.
20 Defendant concluded that these factors and the current COVID-19 pandemic

1 constitute extraordinary and compelling circumstances for his release. *Id.*

2 The Government opposed release because the COVID-19 pandemic is global
3 in nature and not restricted to the BOP. ECF No. 94. The Government contended
4 Defendant will face risks from illness wherever he goes and that rehabilitation
5 alone does not warrant release. Defendant's medical conditions were well-
6 controlled at that time.

7 On March 5, 2021, the Court declined to exercise its discretion to reduce
8 Defendant's sentence because extraordinary and compelling reasons did not
9 warrant such a reduction, nor did the sentencing factors the Court must consider.
10 ECF No. 97.

11 Defendant immediately filed his Third Motion for Reduction in Sentence on
12 March 12, 2021. ECF No. 98. The Court denied the Third Motion for the same
13 reasons previously ordered at ECF No. 97, because it was identical to his Second
14 Motion for Reduction in Sentence (ECF No. 92). ECF No. 99.

15 On December 7, 2021, Defendant has now filed this fourth Motion for
16 Sentence Reduction. ECF No. 100.

17 DISCUSSION

18 A. Eligibility for Compassionate Release

19 Federal courts have the statutory authority to modify an imposed term of
20 imprisonment for two reasons: compassionate release under 18 U.S.C. § 3582(c)(1)

1 or based on a change in the sentencing guidelines under 18 U.S.C. § 3582(c)(2).
2 Until recently, motions for compassionate release could only be brought to the
3 Court by the Director of the Bureau of Prisons. 18 U.S.C. § 3582(c)(1)(A) (2002).
4 However, after the December 2018 passage of the First Step Act, defendants may
5 now bring their own motions for compassionate release after exhausting
6 administrative remedies within the Bureau of Prisons or by waiting 30 days after
7 receipt of their request by the warden of defendant's facility, whichever is earlier.
8 18 U.S.C. § 3582(c)(1)(A) (2018).

9 A defendant may be eligible for compassionate release: (1) if the Court finds
10 "extraordinary or compelling reasons" to warrant a sentence reduction; or (2) if the
11 defendant is at least 70 years old, has served at least 30 years in prison pursuant to
12 a sentence imposed for the offense for which the defendant is currently imprisoned,
13 and the defendant is determined not to pose a risk of danger to the community. 18
14 U.S.C. § 3582(c)(1)(A). Under either eligibility prong, the Court must also find
15 that a sentence reduction is "consistent with applicable policy statements issued by
16 the [United States] Sentencing Commission." 18 U.S.C. § 3582(c)(1)(A). The
17 Sentencing Guidelines instruct that the Court should consider the sentencing
18 factors set forth in 18 U.S.C. § 3553 when deciding a motion for compassionate
19 release, and that the Court should not grant a sentence reduction if the defendant
20

1 poses a risk of danger to the community, as defined in the Bail Reform Act.

2 U.S.S.G. § 1B1.13.

3 **B. Exhaustion or Lapse of 30 days**

4 Defendant attached a November 16, 2021 letter to the warden of the
5 institution where he is housed, requesting release. ECF No. 100 at 16-17. Thirty-
6 days has not elapsed, nor does he provide a denial letter from the Warden.

7 Accordingly, Defendant has not exhausted his administrative remedies and this
8 motion for release is not properly before the Court.

9 **C. Extraordinary and Compelling Reasons**

10 The First Step Act did not define what “extraordinary and compelling
11 reasons” warrant a sentence reduction, but the compassionate release statute directs
12 the Court to consider the Sentencing Commission’s policy statements when
13 deciding compassionate release motions. 18 U.S.C. § 3582(c)(1)(A).

14 The Sentencing Commission’s policy statement on sentence reduction
15 mirrors the language of the compassionate release statute, but it has not yet been
16 updated to reflect the procedural changes implemented by the First Step Act.

17 U.S.S.G. § 1B1.13. “While that particular policy statement has not yet been
18 updated to reflect that defendants (and not just the [Bureau of Prisons (“BOP”)])
19 may move for compassionate release, courts have universally turned to U.S.S.G.
20 § 1B1.13 to provide guidance on the ‘extraordinary and compelling reasons’ that

1 may warrant a sentence reduction.” *United States v. McGraw*, No. 2:02-cr-00018-
2 LJM-CMM, 2019 WL 2059488, at *2 (S.D. Ind. May 9, 2019) (gathering cases).
3 The sentence reduction policy statement outlines four categories of circumstances
4 that may constitute “extraordinary and compelling reasons” for a sentence
5 reduction: (1) the defendant suffers from a medical condition that is terminal or
6 substantially diminishes the defendant’s ability to provide self-care in a
7 correctional environment; (2) the defendant is at least 65 years old, is experiencing
8 a serious deterioration in health due to the aging process, and has served at least 10
9 years or 75% of his or her term of imprisonment; (3) family circumstances
10 involving the death or incapacitation of the caregiver of the defendant’s minor
11 child or the incapacitation of the defendant’s spouse or registered partner; or (4)
12 other reasons, other than or in combination with the other listed circumstances, that
13 are extraordinary and compelling. U.S.S.G. § 1B1.13, cmt. n.1.

14 Most recently, the Ninth Circuit has held “that the current version of
15 U.S.S.G. §1B1.13 is not an ‘applicable policy statement[]’ for 18 U.S.C.
16 § 3582(c)(1)(A) motions filed by a defendant.” *United States v. Aruda*, 993 F.3d
17 797 (9th Cir. 2021). According to the Ninth Circuit, “[t]he Sentencing
18 Commission’s statements in U.S.S.G. § 1B1.13 may inform a district court’s
19 discretion for § 3582(c)(1)(A) motions filed by a defendant, but they are not
20 binding.” *Id.* Thus, “district courts are empowered . . . to consider any

1 extraordinary and compelling reason for release that a defendant might raise.” *Id.*
2 (agreeing with and quoting decisions of Second and Fourth Circuits).

3 Defendant, now age 50, again argues that his medical conditions provide
4 extraordinary and compelling circumstances to warrant his release. Again, he
5 claims to suffer from diabetes, C.O.P.D., asthma, high blood pressure, sleep apnea,
6 gastroesophageal reflux disease (GERD), as well as nerve damage to his legs from
7 a car accident in 2010. Defendant claims that he is at a greater risk for medical
8 complications were he to contract COVID-19.

9 Significantly, Defendant does not allege that he is currently incapacitated or
10 that he is not receiving appropriate medical care for his medical conditions.
11 Whether Defendant is housed in prison or detained at home, the virus continues to
12 spread throughout society. Over 750,000 people have now died in the United
13 States, the vast majority of which were not housed in a prison. Fear of the virus
14 does not warrant immediate release. In this case, there are no extraordinary and
15 compelling reasons for a reduction in sentence.

16 **D. Factors under 18 U.S.C. § 3553(a)**

17 18 U.S.C. § 3582(c) and the Sentencing Guidelines instruct that the Court
18 should consider the sentencing factors set forth in 18 U.S.C. § 3553(a) when
19 deciding a motion for compassionate release. 18 U.S.C. § 3553(a) provides:
20

1 The court shall impose a sentence sufficient, but not greater than necessary, to
2 comply with the purposes set forth in paragraph (2) of this subsection. The
3 court, in determining the particular sentence to be imposed, shall consider—

4 (1) the nature and circumstances of the offense and the history and
5 characteristics of the defendant;

6 (2) the need for the sentence imposed—
7 (A) to reflect the seriousness of the offense, to promote respect for
8 the law, and to provide just punishment for the offense;
9 (B) to afford adequate deterrence to criminal conduct;
10 (C) to protect the public from further crimes of the defendant; and
11 (D) to provide the defendant with needed educational or vocational
12 training, medical care, or other correctional treatment in the most
13 effective manner;

14 (3) the kinds of sentences available;

15 (4) the kinds of sentence and the sentencing range established for—
16 (A) the applicable category of offense committed by the applicable
17 category of defendant as set forth in the guidelines—
18 (i) issued by the Sentencing Commission pursuant to section
19 994(a)(1) of title 28, United States Code, subject to any
20 amendments made to such guidelines by act of Congress
(regardless of whether such amendments have yet to be
incorporated by the Sentencing Commission into amendments
issued under section 994(p) of title 28); and
(ii) that, except as provided in section 3742(g), are in effect on
the date the defendant is sentenced; or
(B) in the case of a violation of probation or supervised release, the
applicable guidelines or policy statements issued by the Sentencing
Commission pursuant to section 994(a)(3) of title 28, United States
Code, taking into account any amendments made to such guidelines or
policy statements by act of Congress (regardless of whether such
amendments have yet to be incorporated by the Sentencing
Commission into amendments issued under section 994(p) of title 28);
(5) any pertinent policy statement—
(A) issued by the Sentencing Commission pursuant to section
994(a)(2) of title 28, United States Code, subject to any amendments
made to such policy statement by act of Congress (regardless of
whether such amendments have yet to be incorporated by the
Sentencing Commission into amendments issued under section 994(p)
of title 28); and

1 (B) that, except as provided in section 3742(g), is in effect on the
2 date the defendant is sentenced.

3 (6) the need to avoid unwarranted sentence disparities among defendants
4 with similar records who have been found guilty of similar conduct; and
5 (7) the need to provide restitution to any victims of the offense.

6 At the time of the original sentencing, the Court fully considered these
7 factors. Once again, the Court has fully considered these factors in light of the
8 developments since sentencing. Of particular note is the nature and circumstances
9 of the offense in this case. The underlying criminal conduct was not a simple one-
10 time event, but rather a course of conduct involving possession and distribution of
11 methamphetamine and possession of firearms. These are serious crimes that
12 present a grave risk of harm to the community. The Court is obligated to protect
13 the public from defendant's dangerous conduct.

14 Additionally, of concern to the Court is Defendant's significant and lengthy
15 prior criminal history involving harassment, violation of protection orders, and
16 domestic violence.

17 The sentence the Court imposed was "sufficient, but not greater than
18 necessary," to comply with the purposes of § 3553(a), including to reflect the
19 seriousness of the offense, to promote respect for the law, to provide just
20 punishment for the offense and to afford adequate deterrence to this criminal
conduct. Even with recent COVID-19 developments, the sentence imposed
remains sufficient but not greater than necessary to comply with the purposes of

1 sentencing.

2 Furthermore, rehabilitation alone does not constitute an extraordinary and
3 compelling circumstance. *See* 28 U.S.C. § 994(t).

4 **CONCLUSION**

5 Defendant's good conduct and successful rehabilitative activities are all
6 commendable, but do not alone warrant early release. 28 U.S.C. § 994(t).
7 Defendant did not properly exhaust his administrative remedies prior to filing this
8 motion. In any event, although Defendant's medical conditions are unfortunate,
9 the Court declines to exercise its discretion to reduce Defendant's sentence because
10 extraordinary and compelling reasons do not warrant such a reduction, nor do the
11 sentencing factors the Court must consider.

12 **ACCORDINGLY, IT IS HEREBY ORDERED:**

13 Defendant's fourth Motion for Reduction in Sentence Pursuant to 18 U.S.C.
14 § 3582(c)(1)(A)(i), ECF No. 100, is **DENIED**.

15 The District Court Executive is directed to enter this Order and furnish
16 copies to the parties.

17 **DATED** December 10, 2021.



18 A handwritten signature in blue ink that reads "Thomas O. Rice".
19 THOMAS O. RICE
20 United States District Judge